

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

VIRGIL KINCAID,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-cv-00193

FAYETTE CO. SHERIFF, et al.,

Defendants.

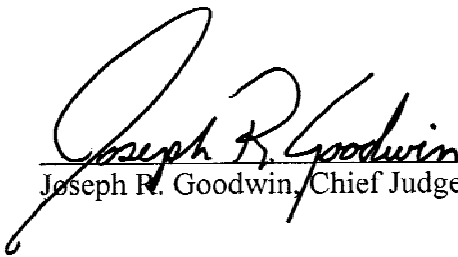
ORDER

Pending for the court is the plaintiff's Complaint [Docket 1]. This action was referred to the Honorable Judge Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted Proposed Findings and Recommendation [Docket 4], recommending that the court **DISMISS** the complaint without prejudice for failure to prosecute. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

The failure to object to a magistrate judge's report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and

recommendations. The court **DISMISSES** the plaintiff's complaint without prejudice for failure to prosecute. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 27, 2009



Joseph R. Goodwin, Chief Judge